

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

IN RE DELTA DENTAL ANTITRUST
LITIGATION

This document relates to: ALL ACTIONS

CIVIL ACTION NO.

1:19-CV-06734

MDL NO. 2931

JOINT RULE 26(f) PLANNING REPORT

Pursuant to the Court’s minute entry dated July 30, 2020 (Doc. No. 298), the undersigned parties make the following joint submission pursuant to Federal Rule of Civil Procedure 26(f).

Procedural Background

Initial Filings: Between October 11, 2019 and November 7, 2019, eleven substantially identical class action complaints were filed in the Northern District of Illinois against the same group of Delta Dental defendants (“Defendants”). Pursuant to the Court’s Initial Case Management Order (“CMO”) (Doc. No. 95), a Consolidated Amended Complaint (“CAC”) was filed on November 26, 2019. Doc. No. 96. Thereafter, an additional seventeen class action complaints alleging substantially similar, but not identical, claims against the Delta Dental Defendants were subsequently filed in various jurisdictions, including four in this District.¹

¹ The complaints filed outside of the Northern District of Illinois are: *Obeng v. Delta Dental Plans Association, et al.*, Case No. 1:19-cv-25072 (S.D. Fla.); *Dickey v. Delta Dental Plans Association, et al.*, Case No. 3:19-cv-00910 (S.D. Miss.); *Mincy v. Delta Dental Plans Association, et al.*, Case No. 1:19-cv-00227 (N.D. Miss.); *Stephens v. Delta Dental Plans Association, et al.*, Case No. 2:19-cv-10576 (C.D. Cal.); *Mells v. Delta Dental Plans Association, et al.*, Case No. 3:19-cv-08182 (N.D. Cal.); *Braunstein v. Delta Dental Plans Association, et al.*, Case No. 3:19-cv-00915 (W.D. Ky.); *DeVinney v. Delta Dental Plans Association, et al.*, Case No. 3:19-cv-08258 (N.D. Cal.); *Kottemann Orthodontics, P.L.L.C. v. Delta Dental Plans Association, et al.*, Case No. 0:19-cv-03139 (D. Minn.); *Baldwin v. Delta Dental Plans Association, et al.*, Case No. 0:19-cv-03141 (D. Minn.); *Drs. Lutins & Benitz, P.A. v. Delta Dental Insurance Company, et al.*, Case No. 1:19-cv-01247 (M.D.N.C.); *Schwartz v. Delta Dental Plans Association, et al.*, Case No. 2:20-cv-00018 (E.D. La.); *Swiecinski v. Delta Dental Insurance Co., et al.*, Case No. 1:20-cv-03913 (D. New Jersey); and *Ben Zvi v. Delta Dental of New York*, Case No. 1:20-cv-05628 (S.D.N.Y.). The four additional complaints filed in this District are: *American Dental Association, et al. v. Delta Dental Insurance Co., et al.*, Case No. 1:19-cv-07909 (N.D. Ill.); *Endodontics of New Mexico*

Creation of the MDL: On December 13, 2019, certain plaintiffs filed a motion before the Judicial Panel on Multidistrict Litigation (“JPML”), seeking to centralize all related actions under 28 U.S.C. § 1407 for coordinated pretrial proceedings. On December 20, 2019, the District Court denied Defendants’ Motion to Stay further proceedings pending the JPML’s determination. Doc. No. 166. On March 27, 2020, the JPML created the instant multidistrict litigation (“MDL”). Doc. No. 264. All pending related cases are either now before this Court as part of the MDL or subject to a conditional transfer order.²

On January 27, 2020, Defendants filed a joint motion to dismiss the CAC. The Court denied that motion on September 4, 2020. Doc. No. 303.

The undersigned are in agreement that in order for this MDL to proceed in an orderly fashion, there must be one operative complaint that applies to all parties and all claims and one discovery schedule by which all parties must abide.

Quinn Emanuel Urquhart & Sullivan LLP and Wollmuth Maher & Deutsch LLP, designated as Interim Lead Counsel by the Court’s CMO, ask the Court to confirm that the CAC is the operative complaint for all purposes in this MDL and order that all other class action complaints filed in, or transferred to, this District as part of MDL 2931 are governed by the CMO and superseded by the CAC.

v. Delta Dental Insurance Company, et al., Case No. 1:20-cv-00798 (N.D. Ill.); *Deep and Daughtry, PC, et al. v. Delta Dental Insurance Co., et al.*, Case No. 1:20-cv-02124 (N.D. Ill.); and *Premiere Dental d/b/a Premiere Dental Spa, et al. v. Delta Dental Insurance Co., et al.*, Case No. 1:20-cv-03880 (N.D. Ill.).

² After the *Swiecinski* action was transferred to this Court, a notice of voluntary dismissal for that case was filed and entered on June 16, 2020. *Swiecinski*, Case No. 1:20-cv-02539 (N.D. Ill.) (Doc. No. 7). With regard to *Ben Zvi v. Delta Dental of New York*, Case No. 1:20-cv-05628 (S.D.N.Y.), Defendants filed a Notice of Potential Tag-Along Action with the JPML, which issued Conditional Transfer Order No. 3 (“CTO-3”). On August 18, 2020, the *Ben Zvi* plaintiffs filed a motion with the JPML seeking to vacate CTO-3. Defendants’ response to the motion to vacate was filed on September 8, 2020, and replies, if any, are due on September 15.

Defendants do not object to the CAC being deemed the only operative complaint for all purposes in this MDL or to the other complaints in this MDL being superseded by the CAC, but defer to the Court on how to most efficiently manage this MDL for purposes of consolidated discovery.

1. **Meeting.** Pursuant to FED. R. CIV. P. 26(f), a teleconference was held on September 8, 2020 and was attended for plaintiffs by Stephen Neuwirth and Leonid Feller, Quinn, Emanuel, Urquhart & Sullivan, LLP, and Ronald Aranoff, Wollmuth Maher & Deutsch LLP, and for Defendants by Britt Miller, Mark Ryan, and Daniel Storino, Mayer Brown LLP.

2. **Pretrial Schedule.**

a. **Amendments.** The last day for any party to amend pleadings (including adding additional parties) absent good cause shown shall be: **January 25, 2022.**

b. **Amendments to Schedule.** The deadlines included herein may be modified: (1) by Court order; (2) by the parties' joint written agreement, submitted to the Court for review and approved by the Court; or (3) by submitting a motion to modify the deadlines after making a good faith effort to meet and confer. The parties recognize that the COVID-19 pandemic may have a material effect on this litigation, including the dates provided herein, and they will work in good faith to address any challenges or delays that result therefrom.

3. **Discovery.**

a. **Discovery Orders.** Defendants and Interim Lead Counsel have been negotiating proposed discovery orders. By **September 30, 2020,** plaintiffs and Defendants will present to the Court (i) a proposed preservation order; (ii) a proposed protective order; (iii) a proposed ESI protocol; and (iv) any stipulation regarding non-discoverability of expert

communications and draft reports; such proposed orders/stipulations shall apply to all parties and all complaints consolidated in the MDL.

b. **Discovery Schedule.** The CAC alleges an antitrust action brought under 15 U.S.C. §§ 1, 15, and 26. Plaintiffs—on behalf of themselves and a putative class—allege that Defendants have engaged in anticompetitive conduct in violation of Section 1 of the Sherman Act. As such, discovery will be required with respect to class certification, liability, and damages. The undersigned have agreed to the attached proposed scheduling order. *See Exhibit A.*

4. **Settlement.** Given the nature and complexity of this case, the number of parties involved, and the early stage of the litigation, the parties believe that it is premature to discuss settlement.

5. **Consent.** The parties unanimously do not consent to proceed before a Magistrate Judge.

Dated: September 9, 2020

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

By: */s/ Stephen R. Neuwirth*

Stephen R. Neuwirth
Toby E. Futter
Joseph Kiefer
51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: 212 849-7000
stephenneuwirth@quinnemanuel.com
tobyfutter@quinnemanuel.com
joekiefer@quinnemanuel.com

Leonid Feller, P.C.
Athena Dalton
191 N. Wacker Drive, Suite 2700
Chicago, Illinois 60606
Telephone: (312) 705-7400
leonidfeller@quinnemanuel.com
athenadalton@quinnemanuel.com

Interim Co-Lead Class Counsel

Respectfully submitted,

WOLLMUTH MAHER & DEUTSCH LLP

By: */s/ Ronald J. Aranoff*

Ronald J. Aranoff
Nicole M. Clark
500 Fifth Avenue – 12th Floor
New York, New York 10110
Telephone: (212) 382-3300
raranoff@wmd-law.com
nclark@wmd-law.com

Interim Co-Lead Class Counsel

KAPLAN FOX & KILSHEIMER LLP

Robert N. Kaplan
Gregory Arenson
Elana Katcher
850 Third Avenue
New York, New York 10022
Telephone: (212) 687-1980
rkaplan@kaplanfox.com
garenson@kaplanfox.com
ekatcher@kaplanfox.com

Chair, Plaintiffs' Interim Executive Committee

/s/ Kathy L. Osborn

Kathy L. Osborn
Ryan M. Hurley
Anna Marie Behrman
FAEGRE DRINKER BIDDLE & REATH LLP
300 N. Meridian St., Suite 2500
Indianapolis, IN 46204
(317) 237-8261
kathy.osborn@faegredrinker.com
ryan.hurley@faegredrinker.com
anna.behrman@faegredrinker.com

Colby Anne Kingsbury
FAEGRE DRINKER BIDDLE & REATH LLP
311 S. Wacker Dr., #4400
Chicago, IL 60606
(312) 212-6573
colby.kingsbury@faegredrinker.com

Jeffrey S. Roberts
Joshua P. Mahoney
FAEGRE DRINKER BIDDLE & REATH LLP
1144 15th Street, Suite 3400
Denver, CO 80203
(303) 607-3500
jeff.roberts@faegredrinker.com
joshua.mahoney@faegredrinker.com

Counsel for Defendants Delta Plan of Arkansas, Inc., Delta Dental of Indiana, Inc., Delta Dental of Kentucky, Inc., Delta Dental Plan of Michigan, Inc., Delta Dental Plan of New Mexico, Inc., Delta Dental of North Carolina, Delta Dental Plan of Ohio, Inc., and Delta Dental of Tennessee

/s/ Benjamin W. Hulse

Jerry W. Blackwell
Benjamin W. Hulse
Gerardo Alcazar
BLACKWELL BURKE P.A.
431 South Seventh Street
Suite 2500
Minneapolis, MN 55415
612-343-3200
blackwell@blackwellburke.com
bhulse@blackwellburke.com

/s/ Britt M. Miller

Britt M. Miller
Daniel K. Storino
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606
(312) 782-0600
bmiller@mayerbrown.com
dstorino@mayerbrown.com

Mark W. Ryan
MAYER BROWN LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3000
mryan@mayerbrown.com

Counsel for Defendants Delta Dental Plans Association, DeltaUSA, Delta Dental of Connecticut Inc., Delta Dental Plan of Idaho, Inc. d/b/a Delta Dental of Idaho, Dental Service of Massachusetts, Inc. d/b/a Delta Dental of Massachusetts, Delta Dental of Missouri, Delta Dental of New Jersey, Inc., Oregon Dental Service d/b/a Delta Dental of Oregon, Delta Dental of Washington, and Delta Dental Plan of Wyoming d/b/a Delta Dental of Wyoming

/s/ Howard Ullman

Stephen V. Bomse
Russell P. Cohen
Howard Ullman
Nicole Gelsomini
ORRICK HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105
415-773-5700
sbomse@orrick.com
rcohen@orrick.com
hullman@orrick.com

galcazar@blackwellburke.com

Lori Swanson
Mike Hatch
SWANSON HATCH, P.A.
431 South 7th Street
Suite 2545
Minneapolis, MN 55415
612-315-3037
lswanson@swansonhatch.com
mhatch@swansonhatch.com

Counsel for Defendants Delta Dental of Minnesota and Delta Dental of Nebraska

/s/ David E. Dahlquist
David E. Dahlquist
WINSTON & STRAWN LLP
35 W. Wacker Drive
Chicago, IL 60601-9703
312-558-5600
ddahlquist@winston.com

Counsel for Defendants Arizona Dental Insurance Service, Inc. d/b/a Delta Dental of Arizona, Hawaii Dental Service, Delta Dental of Iowa, Delta Dental of Kansas Inc., Maine Dental Service Corporation d/b/a Delta Dental Plan of Maine, Delta Dental Plan of New Hampshire, Inc., Delta Dental Plan of Oklahoma, Delta Dental of Rhode Island, Delta Dental of South Dakota, and Delta Dental Plan of Vermont, Inc.

/s/ Allison W. Reimann
Allison W. Reimann
GODFREY & KAHN, S.C.
One East Main Street
Suite 500
Madison, WI 53703
608-257-3911
areimann@gklaw.com

Counsel for Defendant Delta Dental of Wisconsin, Inc.

Emily Luken
ORRICK HERRINGTON & SUTCLIFFE LLP
Columbia Center
1152 15th Street, N.W.
Washington, D.C. 20005
202-339-8400
eluken@orrick.com

Brian Joseph Murray
Timothy D. Elliot
RATHJE WOODWARD LLC
300 E. Roosevelt Road
Suite 300
630-668-8500
Wheaton, IL 60187
bmurray@rathjewoodward.com
telliott@rathjewoodward.com

Counsel for Defendants Delta Dental Insurance Company, Delta Dental of California, Delta Dental of Delaware, Delta Dental of the District of Columbia, Delta Dental of New York, Delta Dental of Pennsylvania, Delta Dental of Puerto Rico, and Delta Dental of West Virginia

/s/ Scott D. Stein
Scott D. Stein
Colleen M. Kenney
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7000
sstein@sidley.com
ckenney@sidley.com

Counsel for Defendants Colorado Dental Service, Inc. d/b/a Delta Dental of Colorado, Delta Dental of Illinois, and Delta Dental of Virginia

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2020, a copy of the foregoing Joint Rule 26(f) Planning Report was filed using the Court's CM/ECF system and thereby, all counsel of record were served via the CM/ECF system.

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

By: /s/ Stephen R. Neuwirth
Stephen R. Neuwirth
Toby E. Futter
Joseph Kiefer
51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: 212 849-7000
stephenneuwirth@quinnmanuel.com
tobyfutter@quinnmanuel.com
joekiefer@quinnmanuel.com

Leonid Feller, P.C.
Athena Dalton
191 N. Wacker Drive, Suite 2700
Chicago, Illinois 60606
Telephone: (312) 705-7400
leonidfeller@quinnmanuel.com
athenadalton@quinnmanuel.com

Interim Co-Lead Class Counsel

UNITED STATES DISTRICT COURT
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CIVIL ACTION NO.

1:19-CV-06734

MDL NO. 2931

[PROPOSED] SCHEDULING ORDER

It is hereby ORDERED as follows for all actions filed in or transferred to this Court as part of MDL No. 2931:

A. The Consolidated Amended Complaint (“CAC”), filed on November 26, 2019 (Doc. No. 96) is the operative class action complaint on behalf of all plaintiffs in this MDL. All other complaints filed in or transferred to as part of this MDL as of the date of this Order are hereby superseded by the CAC and no longer operative complaints.

B. **Amendments.**

a. **Amendments.** The last day for any party to amend pleadings (including adding additional parties) absent good cause shown shall be: **January 25, 2022.**

b. **Amendments to Schedule.** The deadlines included herein may be modified: (1) by Court order; (2) by the parties’ joint written agreement, submitted to the Court for review and approved by the Court; or (3) by submitting a motion to modify the deadlines after making a good faith effort to meet and confer. The parties recognize that the COVID-19 pandemic may have a material effect on this litigation, including the dates provided herein, and they will work in good faith to address any challenges or delays that result therefrom.

C. Discovery Orders. By September 30, 2020, the parties will present to the Court (i) a proposed preservation order; (ii) a proposed protective order; (iii) a proposed ESI protocol; and (iv) any stipulation regarding non-discoverability of expert communications and draft reports; such proposed orders/stipulations shall apply to all parties and all complaints consolidated in the MDL.

D. Defendants shall answer or otherwise plead in response to the CAC by October 30, 2020.

E. Discovery.

- a. The parties shall present to the Court a joint stipulation and proposed order on production of transactional data/documents by October 29, 2020.
- b. Disclosures pursuant to FED. R. CIV. 26(a)(1) to be made by November 12, 2020.
- c. Absent good cause, motions to compel fact discovery shall be filed by June 2, 2022;
- d. Subject to further Order of the Court, fact discovery is to be commenced in time to be completed by July 1, 2022.

e. Fact Depositions

- 1) Absent good cause shown, the maximum number of fact depositions, including depositions pursuant to Fed. R. Civ. P. 30(b)(6), per side is:

For Plaintiffs: 95 depositions inclusive of parties and third-parties.

For Defendants: 95 depositions inclusive of parties and third-parties.

- 2) No individual party shall be subject to more than ten (10) party depositions, including depositions pursuant to Fed. R. Civ. P. 30(b)(6).

F. Class Certification. The following schedule shall apply to motions for class certification:

- 1) The parties shall submit a joint proposal regarding page limitations on briefing for class certification motions and responses on or before July 7, 2022.
- 2) Plaintiffs shall file their motion for class certification and supporting memorandum and disclosures in support of class certification, and shall serve any class certification expert report(s) and, concurrently, any materials, data or information considered in forming the opinions contained in the report(s), on or before August 4, 2022.
- 3) Plaintiffs' class certification expert(s) shall be made available for deposition and deposed by September 22, 2022.
- 4) Defendants shall file oppositions to Plaintiffs' motion for class certification and supporting memorandum and disclosures in opposition to class certification, and shall serve any class certification expert report(s) and, concurrently, any materials, data or information considered in forming the opinions contained in the report(s), on or before November 10, 2022.
- 5) Defendants' class certification expert(s) shall be made available for deposition and deposed by January 12, 2023.
- 6) Plaintiffs shall file their reply in support of class certification and shall serve any rebuttal class certification expert report(s) and, concurrently, any materials, data and information considered in forming the opinions contained in the rebuttal report(s), on or before March 9, 2023. Rebuttal expert(s) shall be strictly limited to responding to new matters raised in the report(s) or in the deposition(s) of Defendants' class certification expert(s). Defendants reserve the right to seek a deposition of any such rebuttal expert(s).
- 7) The parties shall submit a joint proposal regarding page limitations on briefing for

Daubert motions for class certification experts and responses thereto on or before April 20, 2023. The Parties shall simultaneously serve *Daubert* motions for class certification experts challenging the other side's experts by May 4, 2023; *Daubert* oppositions shall be filed by June 1, 2023; and replies shall be filed by June 15, 2023.

- 8) The date for any hearing on Plaintiffs' motion for class certification shall be set by the Court upon completion of briefing.

G. Merits Experts, Dispositive Motions, Other Pre-Trial Matters. No later than 30 calendar days after the Court's ruling on the motion for class certification, the Parties shall meet and confer and provide to the Court a proposed amended Joint Case Schedule regarding the filing of dispositive motions, merits expert discovery, *Daubert* motions for merits expert reports, motions *in limine*, and other final pre-trial matters. To the extent the parties are unable to agree with respect to any aspect of the proposed amended Joint Case Schedule, the parties shall submit their respective positions on those aspects of the proposed order in a joint submission.

ENTERED: _____

HON. ELAINE E. BUCKLO